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CURRENT TOPICS

The Nathan Report on Charitable Trusts

THE voluminous report of the Nathan Committee appointed in January, 1950, on charitable trusts, which was published on 16th December, contains proposals for extensive reforms in the law. A new proposed legal definition is that " charity in its legal sense shall be deemed to include and always to have included trusts for the relief of poverty ; trusts for the advancement of education ; trusts for the advancement of religion ; and trusts for other purposes beneficial to the community not falling under any one of the preceding heads." Another recommendation is that all trusts' accounts should be audited and, so far as possible, be in standard form. Trustees failing to send them in regularly should be liable to " a moderate fine recoverable summarily and payable out of their own pockets." There were impressive advantages to trustees in vesting land in the Official Trustee of Charity Lands and securities in the Official Trustees of Charity Funds. The Official Trustees should be renamed the Official Custodian of Charity Lands and the Official Custodians of Charitable Funds. The provisions of the Charitable Trusts Acts conferring power on trustees to carry out, with the consent of the central authority, certain transactions in land not within the terms of their trust instrument, should be extended by removing the present difficulty in applying the relevant provisions of the Settled Land Act, 1925, to charitable trust land. Power should be given to allow a longer period than the present limit of thirty years for the discharge of a debt secured by mortgage. It is proposed that the range of permissible trustee investment should be extended to comprise, subject to certain safeguards, the debentures and stock and shares (including equity stock and shares) of financial, industrial and commercial companies quoted on The London Stock Exchange. Trustees should be permitted to invest up to, say, half their funds in securities within the extended range.

The *Cy Près* Doctrine and Schemes

THE Nathan Committee hold that the *cy près* doctrine should be relaxed for all trusts, and new scheme-making powers based on the changed doctrine should take the place of the existing powers under the Charitable Trusts Acts and the Endowed Schools Act. The new legislation should admit of trust instruments being altered even though the carrying out of their objects has not become impracticable. It is recommended that, though proposals for a scheme should normally be put forward by the trustees, the scheme-making authority should have power to initiate one. Similarly, any county or county borough council—in London the city corporation, the L.C.C., and the metropolitan borough councils—should be empowered to make proposals about any trust in its area. The scheme-making authorities should be the Commissioners and—in the educational sphere—the Minister of Education. The Chancery Division of the High Court, it is proposed, should retain its existing scheme-making powers, but the county court scheme-making jurisdiction should be abolished. Alterations of trusts under the widened

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powers should not be made within thirty-five years from the trust's foundation, without consent of the trustees and of the founder, if living. Trustees of a charity thirty-five years old or more should have a general right of appeal to the Chancery Division against a scheme made by the Commissioners or the Minister of Education. The Committee recommend that a non-departmental Minister should represent the Commissioners in Parliament. They also consider that advantages can be gained by the judicious merging of trusts.

The Law Society's Conditions of Sale

IT is hoped that the 1953 edition of The Law Society's Conditions of Sale will be issued early in 1953, according to the December issue of the *Law Society's Gazette*. It has been completely revised after reference to the provincial law societies, and in particular it contains an optional general condition (No. 21) which will only be operative if specifically so provided in the special conditions and is designed to enable solicitors acting for purchasers to leave the making of all the usual searches and enquiries until after the signing of the contract in appropriate cases. The new edition will also include amendments arising from the introduction of the Town and Country Planning Bill. In the meantime, the announcement states, solicitors who are acting for purchasers who are paying more than existing use value should normally see that the contract provides that the right to any claim under Pt. VI of the Town and Country Planning Act (as commuted by the new Bill) passes to the purchaser in case the new Bill should not reach the statute book in the form in which it has been presented to Parliament.

Criminal Appeals: Power to Order New Trials

THE LORD CHANCELLOR announced in the House of Lords, on 16th December, in answer to a question by EARL JOWITT, that a departmental committee has been set up by the Home Secretary " to consider whether the Court of Criminal Appeal and the House of Lords should be empowered to order a new trial of a convicted person who has appealed to the Court of Criminal Appeal or whose case has been referred to the court by the Secretary of State, and if so, in what circumstances and subject to what safeguards." LORD TUCKER is to be the chairman and the other members are Sir TRAVERS HUMPHREYS, Mr. RICHARD F. LEVY, Q.C., Mr. JOHN BASS, M.B.E., Sir THEOBALD MATHEW, K.B.E. (Director of Public Prosecutions), Mr. NOEL LEIGH TAYLOR, M.B.E. (solicitor), Mr. FRANCIS GRAHAM-HARRISON, of the Home Office, and Mr. G. P. COLDSTREAM, of the Lord Chancellor's Office. The secretary is Mr. R. A. JAMES, M.C., of the Home Office.

Solicitors for Mortgagees and Additional Searches and Enquiries

PRACTICAL difficulties that sometimes arise where a solicitor acting for a building society in connection with a mortgage has to incur the additional expense and delay of further searches and enquiries are the subject of some good advice by the Council of The Law Society in the December issue of the *Law Society's Gazette*. In the majority of cases, they say, such further searches and enquiries are not necessary on behalf of the purchaser, because the contract usually provides that the purchaser takes subject to anything registered between contract and completion. Where the client is a building society there is in certain cases an element of risk sufficient to warrant the further searches and enquiries, e.g., where there has been unusual delay between the signing of the contract and completion, or perhaps, where, to the knowledge of the solicitors concerned, a development plan affecting the area in which the property is situated has come into operation since the signing of the contract. The Council of the Building Societies' Association are not prepared to agree to a suggestion by the Council of The Law Society that, save in exceptional cases, solicitors for building societies should not be regarded, in the absence of instructions from their clients to the contrary, as under any obligation to make further searches and enquiries, on the basis that solicitors will use their discretion in deciding whether to draw their clients' attention to any special point which would merit the making of further searches and enquiries. In the circumstances, solicitors acting for mortgagees, whether building societies or not, are advised, notwithstanding the further expense and possible delay involved, to make further searches and additional enquiries in all cases before completion of a mortgage, except where they have specific authority from their clients not to do so.

Limited Civil Aid Certificates

WHEN a civil aid certificate in lieu of an emergency certificate is refused, the *Law Society's Gazette* for December states, the emergency certificate is deemed to have been revoked and the provisions of General Regulation 12 (5) apply, and the person to whom the emergency certificate was issued becomes liable for the full solicitor and own client costs of the work done under the emergency certificate. The Council state that when a certifying committee are of opinion that a full civil aid certificate cannot be issued in lieu of an emergency certificate, before refusing the application they should consider whether or not a limited civil aid certificate covering only the work already done under the emergency certificate should be issued, and should grant such a limited civil aid certificate unless in their view the emergency certificate ought never to have been issued. In a further note referring to General Regulations 5 and 8 (1) (*b*), the Council state their opinion that it is desirable that a uniform practice should be adopted and that all applications to extend a limited civil aid certificate should be considered by area committees, who, where the facts justify it, should amend the certificate by removing the limitation or by extending the certificate to cover the whole proceedings. Accordingly, where application is made to a local committee for a civil aid certificate to continue proceedings in which a limited civil aid certificate has already been issued, the application should not, the Council state, be dealt with by a certifying committee of the local committee, but should be passed to the appropriate area committee.

Building Licences

THE Control of Building Operations (No. 18) Order, 1952 (S.I. 1952 No. 2111), made under reg. 56A of the Defence (General) Regulations, 1939, will come into operation on 1st January, 1953, and will supersede the 1952 (No. 17) order. This order implements the announcement noted at p. 770, *ante*. It provides that during the period 1st January, 1953, to 31st December, 1953, building and civil engineering work may be done without a licence on any property if the cost of the work, together with the cost of any previous work carried out on the property without a licence in the period, does not exceed £500. For " designated buildings," which may be described generally as industrial buildings and farm buildings other than dwelling-houses, the limit is increased to £2,000. The requirement that local authorities and certain public utility undertakings must obtain an authorisation from a Government department for certain operations will continue to apply only to operations the total cost of which amounts to more than £500.

THE DEFAMATION ACT, 1952—III

SECTIONS 7, 8 AND 9

IT has long been accepted that there are cases in which the individual's right to the protection of his reputation must yield to the public interest, which requires that the fullest information upon certain matters shall be widely available. This salutary principle of the common law has, in theory, never been destroyed. In practice, however, the area of its application is by no means certain, and at any rate in this century the courts have been unwilling to apply it in any instances not falling clearly within the decided cases. The Law of Libel Amendment Act, 1888, assisted the process whereby a principle was exchanged for a catalogue. The present Act greatly extends the catalogue so as to bring within it the category of privileged reports. The proceedings of many bodies which were of little interest to the public, or did not even exist, in Victorian times may now be reported without fear of actions for libel. Thus, though it may be regretted that a principle has been abandoned in favour of a catalogue, the Act does at any rate ensure that the catalogue is an up-to-date one.

QUALIFIED PRIVILEGE OF NEWSPAPERS (SECTION 7)

Privilege enjoyed by newspapers before the present Act has been built up piecemeal, a long and not altogether sure step in this process being the Law of Libel Amendment Act of 1888. Section 4 of that Act is now repealed but otherwise the present Act confirms the special status of all such actions as have hitherto been privileged (s. 7 (4)).

Section 4 of the Law of Libel Amendment Act is repealed by s. 18 of the present Act. It conferred qualified privilege on fair and accurate reports in newspapers of the proceedings of public meetings. The question of which are public meetings, and what immunity reports of their proceedings are to enjoy, is now fully dealt with in s. 7 of the present Act and the Schedule to that Act. Section 7 confers qualified privilege on a variety of actions, many of them new to that benefit. Subsection (1) provides that, subject to the provisions of the section, the publication in a newspaper (defined in subs (5): see *infra*) of the reports or other matters mentioned in the Schedule shall be privileged unless the publication is proved to be made with malice.

The Schedule is divided into three Parts. Part III is concerned with the interpretation and definition of the terms used in Pt. I and calls for no comment. Parts I and II are headed respectively: "Statements Privileged Without Explanation or Contradiction" and "Statements Privileged Subject to Explanation or Contradiction." The Act of 1888 provided for the explanation or contradiction of libel contained in reports of public meetings, but the provision is given new prominence in the present Act. Both categories of the Schedule are covered by the requirements of subss. (1), (3), (4) and (5), but only the cases mentioned in Pt. II of the Schedule are covered by subs. (2). In the cases specified in Pt. II of the Schedule (see *infra*) the victim of a libellous report or statement may demand that any newspaper in which it has been published print a reasonable letter or statement to explain or contradict it. If in response to such a request the newspaper fails to publish such reasonable letter or statement, or does so in a manner not adequate or not reasonable having regard to all the circumstances, a defence under the section will not be available (subs. (2)). It will be a question for the jury to decide what is a "reasonable letter or statement" and an "adequate" mode of publication under the section. No doubt any correction should be given a similar prominence to the matter it corrects and the letter or statement, in order to be reasonable, should be confined to the refutation of the libel or any necessary explanation required to prevent misinterpretation or false innuendo. It should clearly not contain extraneous self-advertisement or complaint or gratuitous criticism of the journal in which it is to appear.

The statements in Pt. I of the Schedule are: (1) fair and accurate reports of public proceedings of the Legislature of any part of Her Majesty's dominions outside Great Britain; (2) fair and accurate reports of public proceedings of international organisations of which the United Kingdom or the Government is a member or to which the Government sends a representative; (3) fair and accurate reports of public proceedings of an international court; (4) fair and accurate reports of proceedings before a court exercising jurisdiction throughout any part of Her Majesty's dominions outside the United Kingdom, or before a court martial held under the relevant Acts outside the United Kingdom; (5) fair and accurate reports of public proceedings before a body or person appointed to hold a public inquiry by the Government or Legislature of any part of Her Majesty's dominions outside the United Kingdom; (6) fair and accurate copies of or extracts from registers kept under any Act which are open to public inspection, or of other documents required by law to be so open; (7) notices or advertisements published by or on the authority of a court within the United Kingdom or a judge or officer of such a court.

Part II of the Schedule specifies: (8) fair and accurate reports of findings or decisions relating to their members, or persons under their control, of associations formed in the United Kingdom to promote and control (*a*) any art, science, religion or learning; (*b*) any trade, business, industry or profession; (*c*) any game, sport or pastime to the playing of which the public are admitted; (9) fair and accurate reports of public meetings in the United Kingdom; (10) fair and accurate reports of meetings or sittings, to which the Press and public are admitted, of (*a*) local authorities and their committees; (*b*) justices not acting as a court exercising judicial authority; (*c*) commissions, tribunals, etc., appointed to hold an inquiry by statute, by the Queen or by a Minister; (*d*) persons appointed by local authorities to hold statutory local inquiries; (*e*) any other statutory tribunal, board, committee or body; (11) fair and accurate reports of the general meetings of companies other than private companies; (12) copies or fair and accurate reports or summaries of notices, etc., issued for public information by Government departments, officers of state, local authorities and chief officers of police.

It should be noted that the section applies only to publications in a "newspaper," which is redefined so as to allow an interval between issues of thirty-six days, thus bringing monthly journals within the scope of the section (subs. (5)).

Subsection (3) repeats the language of s. 4 of the Law of Libel Amendment Act, 1888, which it replaces, and excludes from privilege any matter the publication of which is prohibited by law, or which is not for the public benefit or which is not of public concern. In the case of parliamentary affairs the issue is hardly likely to arise, since the lightest word of the Legislature may be deemed of public concern. In the case of judicial proceedings, publication is already limited by the Judicial Proceedings (Regulation of Reports) Act, 1926, which makes it a criminal offence to publish, in relation to judicial proceedings, indecent matters injurious to public morals, and in matrimonial causes anything beyond certain limits; but in the case of many other kinds of

proceedings listed in the Schedule to the Act, the issue of public concern may well arise.

EXTENT OF LAW OF LIBEL AMENDMENT ACT, 1888, S. 3 (SECTION 8)

Section 8 limits to proceedings in the courts of the United Kingdom the absolute privilege which, under s. 3 of the Law of Libel Amendment Act, has hitherto attached to newspaper reports of judicial proceedings in any appropriate court, English or foreign. The previous section of the present Act allowed, for the purpose of that section, an interval between issues of thirty-six days, but the term "newspaper" must still be understood for the purposes of s. 8 as defined by the Newspaper Libel and Registration Act, 1881, and the interval between issues is thus limited to twenty-six days.

EXTENSION OF CERTAIN DEFENCES TO BROADCASTING (SECTION 9)

Section 9 completes the reconstruction of the law relating to qualified privilege by extending to wireless broadcasts the provisions of ss. 7 and 8. In addition, s. 3 of the Parliamentary Papers Act, 1840, which confers protection in respect of proceedings for printing extracts from or abstracts of parliamentary papers, is also to apply to wireless broadcasts and may be read as follows:—

> "It shall be lawful in any civil or criminal proceeding to be commenced or prosecuted for printing or broadcasting by means of wireless telegraphy any extract from or abstract of such report, paper, votes, or proceedings, to give in evidence under the general issue such report, paper, votes, or proceedings, and to show that such extract or abstract was published or broadcast *bona fide* and without malice; and if such shall be the opinion of the jury, a verdict of not guilty shall be entered for the defendant or defendants."

The principles of the defence of privilege are thus brought into line with modern conditions, placing that most widespread of news and information services, the B.B.C., on the same footing as printed newspapers.

To obtain the protection of s. 9, a broadcasting station must be licensed by the Postmaster-General to transmit services for general reception. Section 9 (3), defining "broadcasting station" for the purposes of the section, expressly recognises that the form of such an authorisation will depend on the enactments in force at the time, and is clearly intended to comprehend whatever altered arrangements may be made in the present structure of British broadcasting. In this section broadcasting is given a different meaning from that which it bears in s. 1.

CANDIDATES AT ELECTIONS (SECTION 10)

The extent to which qualified privilege attaches to statements made by a candidate for parliamentary or municipal office has long been uncertain. In *Braddock* v. *Bevins* [1948] 1 K.B. 580; 92 SOL. J. 180, the Court of Appeal held that qualified privilege attaches to statements made by a parliamentary candidate in his election address, even though they were defamatory, not of the opposing candidate, but of some of his supporters. Section 10 enacts that no privilege shall attach to statements made by, or on behalf of, a candidate in any election to a local government authority or to Parliament, on the ground that they are material to a question in issue in the election, whether or not the person by whom they are published is qualified to vote at the election. If, however, a statement is privileged on some other ground, that privilege is not affected by the section.

AGREEMENTS FOR INDEMNITY (SECTION 11)

This section was enacted in order to remove any doubts as to the validity of certain contracts of insurance and indemnity entered into between authors and publishers, or publishers and printers, and insurers. It provides that an agreement for indemnifying any person against civil liability for libel in respect of the publication of any matter shall not be unlawful unless at the time of the publication that person knows that the matter is defamatory, and does not reasonably believe there is a good defence to any action brought upon it.

In the opinion of the writer, the provisions are merely declaratory of the previously existing law.

MITIGATION OF DAMAGES (SECTION 12)

At common law, the defendant in an action for libel or slander is not entitled to give evidence, in mitigation of damages, that the plaintiff has already recovered, or has brought an action for, damages in respect of libels to the same effect.

An exception to this common-law rule was made by the Law of Libel Amendment Act, 1888, in respect of libels contained in newspapers as defined in that Act.

Section 12 of the present Act abrogates the rule in respect of all defendants.

HAROLD LEVER

A Conveyancer's Diary

THE RULE IN SHELLEY'S CASE

THE case of *Re Williams* [1952] Ch. 828 decided nothing which was not, for all practical purposes, already law, and it is therefore one of those decisions which, strictly speaking, should never have been reported. But if it had not found its way into the books we should have been deprived of a rare pleasure, for it is seldom that a point of really old-fashioned property law is raised, as happened in this case, in these days, and seldom too that such a point is argued with such skill. After reading the argument for the plaintiff, it is difficult to know whether to admire it more for its ingenuity or for its impudence.

The point arose in this way. By the will of a testator who died in 1921, certain real property was devised to the use of the testator's son *W* during his life with remainder to the use of his first and other sons successively, according to seniority, in tail male, with divers remainders over which are immaterial for the present purpose. *W* had no issue, and being advised (presumably) that he was entitled under this devise not simply to an estate for life, but for an estate in tail male in possession, he executed a disentailing assurance and thus purported to bar the entail.

Now this form of limitation has been commonly used by conveyancers for generations for the purpose of limiting an estate for life to a propositus (in this case *W*), with remainder to the sons of the propositus in tail male. In this particular case, the will having been made and having come into operation before 1926, the various estates limited to *W* and his male issue took effect as legal estates, that being the

practice at the time. Nowadays, where similar limitations are made, they are made to take effect in equity only. But this is an immaterial distinction. What is important is that the form of the limitation (" to or in trust for *X* during his life, with remainder to or in trust for his first and other sons successively according to seniority in tail male "), whether used to create legal estates or equitable interests, has for generations been unquestioned, and it is still in common use for the purpose for which it was designed. There are differences in detail, no doubt, between the forms recommended, both now and in the past, in the different collections of conveyancing precedents, but substantially, if it was or is desired to limit property to *X* for life with remainder to his issue in tail male, the form of words to be found in the various books to carry the desired object into effect will be found to correspond very closely with the wording of the limitation which was the subject of the dispute in the present case.

The view taken by *W* in the present case, that he was entitled to an estate in tail which he could bar, and not merely to an estate for life, was based on the proposition that the rule in *Shelley's* case applied to the limitation in question so as to work the necessary transformation. The rule in *Shelley's* case (1581), 1 Co. Rep. 93, was stated by Lord Herschell in *Van Grutten* v. *Foxwell* [1897] A.C. 658, at p. 662, in the following words: " It is a rule of law that where an estate is devised to the ' heirs ' or ' heirs of the body ' of a person to whom a prior estate of freehold has been given, the heirs take by descent, and not by purchase, and that an estate in fee simple or in fee tail is created in the ancestor." To this may be added, by way of further explanation, that in order that the rule may take effect, the limitations to the ancestor, or propositus, and to his heirs or heirs of the body, must be contained in the same instrument.

In *Re Williams* no estate was devised, in those words, to the " heirs of the body " of *W*, the limitation being to his first and other sons, etc., and *prima facie* the rule could, therefore, have no application to the case. It was certainly on the assumption that this was so that successive authors and editors of collections of conveyancing precedents have proceeded, for it was never in their contemplation that a propositus such as *W* in this case should be given anything more than a life estate. But it was argued for *W* in this case that this was immaterial, and this argument was founded on passages from the speeches of Lords Macnaghten and Davey respectively in *Van Grutten* v. *Foxwell, supra*. The relevant passage from the former's speech is as follows (p. 668): " It is hardly necessary to observe that any expression which imports the whole succession of inheritable blood has the same effect in bringing the rule [in *Shelley's* case] into operation as the word ' heirs '." Similarly, Lord Davey said (at p. 685): " The question always remains, whether the language of the gift after the life estate, properly construed, is such as to embrace the whole line of heirs or heirs of the body or issue." On the strength of these passages it was said that the phrase in the limitation in the present case " his first and other sons successively according to seniority in tail male " imported the whole succession of male inheritable blood of the body of the propositus *W*, and that, therefore, the rule in *Shelley's* case applied. Neither the premise to this argument nor its conclusion was logically assailable, but it was argued in reply that the passages above quoted from the speeches of the two learned lords went wider than was necessary and did not contain an exhaustive definition of the rule in all its strictness. This last argument the learned judge (Roxburgh, J.) accepted.

He founded his conclusion principally on the case of *Goodtitle* v. *Herring* (1801), 1 East. 264, an action in ejectment which turned on the effect to be given to a limitation to the use of " the heirs male of the body of Margaret Davie to be begotten, severally and successively and in remainder one after another as they and every one of them should be in seniority of age and priority of birth, the elder of such sons and the heirs male of his body lawfully issuing being always preferred." The pleonastic form of this limitation, typical of its period, did in fact contain a specific reference to the heirs male of the body of Margaret, but as the learned judge in the present case pointed out, it also contained words closely resembling those used in the limitation in the present case. The decision of the Court of King's Bench was that under this limitation Margaret took only an estate for life, not an estate tail, and from it Roxburgh, J., felt himself entitled to draw the conclusion that " in a devise in common form in a strict settlement, the sons of the propositus take as purchasers, and the words devising estates tail to them should not be construed as words delimiting the estate of the propositus."

That was the end of the present case, and it only remained to show that the *dicta* of Lords Macnaghten and Davey did not form, in the words of the learned judge, " a complete guide to the problem." In another part of his speech, which is, of course, one of the most celebrated judgments which have ever been delivered in an English court (and one of the most entertaining, too, for anyone willing to believe that the history of our land law is not necessarily the exclusive preserve of Dryasdust), Lord Macnaghten observed that the question " in every case " must be whether the expression requiring exposition is used as the designation of a particular individual or class of objects on the one hand, or whether it includes the whole inheritable succession on the other hand (see [1897] A.C., at p. 677). That seemed to show that an expression which might be capable at one and the same time of including both a particular class of objects and the whole inheritable succession of a propositus need not necessarily be construed as indicating the latter. But although the *dicta* which had founded the plaintiff's argument in this case could be explained in this way, Roxburgh, J., went further in his judgment in the present case: he said that whether he had interpreted these *dicta* correctly or no, he was convinced that strict settlements in common form must be, and were intended to be, excluded from their scope. " A B C "

Landlord and Tenant Notebook

HABENDUM ON HOLDING OVER

THE so-called merit of simplicity has been much discounted by courts concerned with landlord-and-tenant questions of recent years. Thus, in order to decide whether or not some object is a removable fixture or part of the freehold, the object of annexation has gained importance at the expense of the degree thereof (see *Spyer* v. *Phillipson* [1931] 2 Ch. 183 (C.A.)); in order to determine whether parties are landlord and tenant or licensor and licensee, their intentions will be examined at length, and the result will not depend on such concrete facts as whether exclusive possession was enjoyed or what payments

made therefor were called (see the numerous recent authorities discussed from time to time in this "Notebook," e.g., 96 SOL. J., pp. 67, 355, 743).

This may make for justice, but it also tends to make the task of the practitioner, when advice is sought, a difficult and delicate one. For this reason, at all events, the decision in *Adler* v. *Blackman* [1952] 2 All E.R. 945; 96 SOL. J. 802 (C.A.) will be welcomed as at least partly restoring a rule of thumb test for the habendum of a new tenancy created by holding over.

For some centuries, the answer to the question what was the term of the new tenancy would readily be given as "from year to year." That position was brought about in the days when most leases and tenancies were leases or tenancies of agricultural land, which, if granted for fixed terms, began and ended at Michaelmas or perhaps Lady Day, and which reserved yearly rents payable quarterly on the usual quarter days or half-yearly on two of such days. The inference that the tenant who held over did so on a yearly tenancy was irresistible.

I use the expression "irresistible" because in such cases one fact which would point to such an inference would be that landlord and tenant of a farm naturally contemplate entry and quitting at Michaelmas or at Lady Day; but as time went on, the inference came to be drawn from the mere fact that the rent had been a yearly rent. There were decisions which did not actually arise out of a holding over, but out of the failure of the parties to express the length of term, which were to prove important when the habendum of a tenancy created by holding over was in issue; for in each case an inference has to be drawn. In *R.* v. *Inhabitants of Herstmonceaux* (1827), 7 B. & C. 551, one of those old "pauper settlement" cases which have contributed towards the law of landlord and tenant, the pauper had at one time agreed to take a house at £21 *a year* the rent to be payable weekly: Bayley, J., held that this was *prima facie* a yearly tenancy. In *Braythwayte* v. *Hitchcock* (1842), 10 M. & W. 494, Parke, B., said that for an agreement to develop into a yearly tenancy by payment and acceptance of rent payment of rent "must be understood to mean a payment with reference to a yearly holding"; "with reference to a year, or any aliquot part of a year." These authorities were cited by Maugham, J., in his important statement of the law affecting holding over in *Ladies' Hosiery and Underwear, Ltd.* v. *Parker* [1930] 1 Ch. 304 (C.A.), the subject-matter of which was actually a small but valuable strip of land behind some commercial property in the metropolis. The defendants concerned were husband and wife; the former had, by a written agreement, taken a tenancy (later assigned by him to his wife) of the piece of ground (which he used for his business as a general dealer "or" fruiterer), to run for three years from 12th October, 1914, at a rent of £2 *a week*. There had been various complicated dealings with the reversion since then, but the tenant had remained in possession after 12th October, 1917, paying rent to certain assignees but not to the plaintiffs, and ultimately the questions arose whether there was any tenancy by holding over and, if so, what was its term. Maugham, J., actually decided the case in favour of the plaintiffs on the first point (and the Court of Appeal, which agreed that there had never been any consensus, upheld him on that point alone). But he also examined the question whether, if there were consensus, the defendant's tenancy would be a yearly or a weekly one; and if the remarks made bear the character of *obiter dicta*, the reasoning they contain gives them considerable persuasive force. "It is well known, I think, that 'tenancy from year to year' is a tenancy which originally used to be described as a tenancy at will, with a provision that not less than six months' notice had to be given to put an end to it, expiring at the time of the year at which the original tenancy expired . . . At the end of the year, if not determined by proper notice, another year is added to the term. It is true that the rent may be paid each year, or half-yearly or quarterly, or even weekly; but in those cases . . . *the rent is always a payment by reference to a year's rent.*" In the case before him: "It is not a lease for three years at a rent of £104 per annum payable weekly: and it is observable that £2 a week is a rent which, as we all know, is not exactly divisible into the number of days either of an ordinary year or of a leap year . . . I have come to the conclusion that there is no reason for extending the views . . . as to the terms which *justify the inference* that a tenancy is from year to year, and that in this case, narrow as the distinction is, the holding over of the premises after the expiration of the agreement of 10th October, 1914, would have resulted only, and did result only, in the tenant's being a tenant from week to week."

What Maugham, J., spoke of as a refusal to extend might also be regarded as a readiness to distinguish and would tend to meet the criticism, so often made (for a recent instance, see the report of an after-dinner speech by the Dean of the Faculty of Law at the University of Southampton, in *The Times* of 11th December), of the "legal mind" as "inflexible."

At all events, these authoritative *dicta* gave practitioners clear guidance which accorded with common sense—and all went well till the decision in *Covered Markets, Ltd.* v. *Green* [1947] 2 All E.R. 140, which concerned the holding over by the tenant of a lock-up fish shop after the expiration of a lease for seven years at a rent of £3 payable weekly in advance, and which had been paid every Monday. Macnaghten, J., refused to draw an inference the effect of which would be that the tenant, who had held over for some years when a week's notice to quit was given him, could be ejected at such notice. He did not think that Maugham, J.'s pronouncement meant that the proper inference *might* not be that the tenant held over as a tenant from year to year. And he distinguished the facts in that (*a*) he was dealing with a shop, not a piece of vacant ground (this rather exaggerates the contrast: the Parkers had used the ground for open-air business); (*b*) the original lease was for seven, not three, years; and (*c*) the tenant had been allowed to stay on for several years after the termination of the period (in the other case, the defendants had stayed on; but it might be right to say that, in the peculiar circumstances—at one time the reversioners apparently knew nothing about the ground or their occupation—they had not been "allowed" to do so).

This decision has now been disapproved, and *Ladies' Hosiery & Underwear, Ltd.* v. *Parker* applied, in *Adler* v. *Blackman*, an action for the possession of a shop which had been let "for the term of one year to commence from 22nd December, 1947, at the inclusive weekly rent of £3 payable weekly in advance on every Monday in each week during the whole of the tenancy the first four weeks to be paid on the signing hereof." The tenant had gone on paying the £3 a week after 22nd December, 1948, and was given a week's notice in July, 1950. There were other factors which might shed some light on the position obtaining after 22nd December, 1948: e.g., it appeared that he had been a weekly tenant before 22nd December, 1947; and also that, when he received the notice to quit, so far from challenging it he set about claiming a new lease or compensation for goodwill under the Landlord and Tenant Act, 1927. Mentioning the latter fact, Jenkins, L.J., observed that it was true that an erroneous view taken by parties could not alter the effect of a bargain previously made, but what one was here seeking was the

intention to be imputed to the parties from the facts that the tenant had remained in occupation and paid rent. But apart from the evidence of the tenant's reaction to the notice, he and his colleagues agreed with the view expressed by Maugham, J., in *Ladies' Hosiery & Underwear, Ltd.* v. *Parker;* that *Covered Markets, Ltd.* v. *Green* was virtually indistinguishable; and that, the parties not having expressed the terms of their relationship, one must presume a tenancy " for the period in respect of which " (as Somervell, L.J., put it) " the rent is expressed."

R. B.

HERE AND THERE

AESTHETIC LITIGATION

THE law courts are the mirror of society, often larger than life, sometimes a distorting mirror, but always a test of what people feel strongly enough about to quarrel over in public, and even, when they are not State-aided litigants, to risk their own money over—always a capital point. Now, it is not quite true to say that you will search the fairly modern Law Reports in vain for any sign that the English have an aesthetic sense, but it is nearly so. Picture-dealing cases, of course, don't count, for picture dealing is just as much a mere commercial transaction as selling motor cars. Copyright cases don't really count either. It is only in such actions as *Whistler* v. *Ruskin*, few and far between, cases of pure disinterested artistic criticism, that one catches a glimpse of the feeling and even the fury that the arts occasionally arouse in English hearts. But, for the most part, that feeling and that fury are dormant, and even in the case of architecture, which touches so nearly those of us who have, or hope to have, a roof over our heads, there is no very strong public opinion as to what a building should actually look like, provided the lighting, the heating, the usual offices and the assorted scientific gadgets are in order. An action over the hygienic shortcomings of a building everybody would understand; an action over its aesthetic shortcomings would be treated as something of an eccentric extravagance. Apparently they order this matter otherwise in France. Maybe you have heard of Le Corbusier and Radiant City. He is a Swiss architect, the idol of the moderns, and it is his darling dream-child, seventeen stories of glass and concrete, stilted up on concrete legs 20 feet tall, a Wellsian vision of the city of the Future. When it began to take unfamiliar shape in Marseilles feelings rose to boiling point. It was denounced as an eyesore and lauded as the perfect "machine for living." The battle of ideas at one time interrupted the building work till the hand of the Minister of Housing himself got it going again, and in due course it was completed and inaugurated last October. In England, with its talent for accepting accomplished facts by the device of thinking about something else, that would have been an end of the matter, but not in France. Early in December there came on in the Correctional Court of Marseilles an action against Le Corbusier by a body described as the Society for the General Aestheticism of France, which claims 20,000,000 francs damages. The action rests on two grounds. First, it is said that he built without previously obtaining the necessary licences, a prosaic little formality which we in England understand very well, for we have seen eminent persons before now in just the same sort of trouble. Secondly, and for us more surprisingly, it is alleged that the building " has drawbacks of a moral order and is contrary to French style and aestheticism." Were such a cause of action known to the English law one may surmise that Sir Alfred Munnings might well be a most persistent and successful litigant.

THE CASE SO FAR

THERE was ample scope for expert evidence and the first witness opened the attack on orthodox town planning lines, criticising the width of the stairs, the lighting of the kitchens, the design of the bedrooms, the lack of privacy and even the provision of a shopping centre, which, it was suggested, tended to confine residents to the flat-block. This might be compared to the first moves of the pawns in a game of chess, or the humble necessary infantry moving in to attack a fortified position. Next came the more dashing advance of the cavalry in the person of a former president of the Paris Municipal Council, who was also an architect. He broadened the attack, invoking the French way of life, the Frenchman's preference for individual houses rather than collective dwellings. " We are faced," he said, " with an official attempt to control housing, and I do not think the Frenchman wants to be told how he must house himself." Counsel for the society, with a panache which English advocates can only envy in silence, spurred forward with even more overwhelming vigour. The proceedings, he declared, were intended to combat the appearance of those " great warts which are the country's shame." He challenged the " brutal realism " of the conception. Moreover, he said, the building licence had been refused, although the Ministry had allowed the construction to proceed, and the point was whether the defendant should be allowed to mock the law. " Had we asked for a strict application of the law," added counsel, " we should have applied for a demolition order," but he remarked magnanimously, though somewhat inconsistently, that it was not desired to waste the 4,000,000,000 francs spent in putting it up. (The analytical mind will find it difficult not to conclude that, if indeed the building possesses all the vices and defects so lavishly attributed to it, the money has been wasted already.) There, so far as our information goes, the matter rests at present, for Monsieur Le Corbusier is in India engaged in rebuilding a town there on his own revolutionary principles. It is only fair to add in the interim that some at least of the tenants have rather confused the issue by finding that in Radiant City " life is heaven." One of these days the English will have a chance of showing whether they are as litigiously earnest in architecture, for there is a Corbusier-like scheme afoot called " High Paddington " for building a glass and concrete hexagon on stilts high above the sprawling railway marshalling yards. Any opponents can borrow the pleadings in the Marseilles case. With a little water to the heady wine of French forensic eloquence, they might help.

RICHARD ROE.

CRIMINAL LAW REFORM IN RURITANIA

IN the course of my holidays in Ruritania last summer I had the good fortune to be entertained by the Lord Chief Justice, who explained to me the origins of those remarkable changes that have distinguished the criminal law of his country in recent years. Under the influence of a broad-minded and humanitarian Bench, readily influenced by the arguments of doctors and psychiatrists, the administration of criminal law had for many years been growing more and more cumbersome. The simplest criminal prosecution was apt to last for several days, while the prisoner's state of mind was analysed and argued, and a complex series of degrees of insanity and personal responsibility were built up. It would only have been a question of time, the Lord Chief Justice told me, before the whole system was brought to a stop by its own complexity.

Then, fortunately, the Lord Chief Justice had a happy idea. It appears that, like Archimedes, he had it in his bath. " Why " (he tells me he exclaimed), " Why *mens rea?* "

Proceeding from this idea, he began to unravel the tangled coil of his country's legal system, until its criminal trials have become the wonder of the world.

Ruritania had long since abolished capital punishment and all forms of corporal punishment. There remained only the punishments of imprisonment and fining.

"I suddenly realised," the Lord Chief Justice told me, "that it was an impertinence on the part of mortal man to try to establish moral guilt. Ruritania is a Christian nation and we believe that good and evil among mortals will receive their due deserts from other hands than ours. The task of a mere earthly judiciary is to protect the State. We continue to lock people up but we do not try to make their incarceration any sort of punishment, apart from the inevitable unpleasantness involved in losing one's liberty.

"All we seek to establish at a criminal trial is that the prisoner did what the prosecution said he did. His state of mind is a matter of supreme indifference to the judge. Every prisoner is forgiven his first crime. On conviction of his second, which only means on proof that he did the thing alleged, he is locked up for a year, and on every subsequent conviction the period of locking up is doubled.

"Upon sentence, every prisoner goes to a clearing house where his mental state is examined. If his offence appears to have been due in any degree to mental derangement, varying from complete insanity to mere eccentricity, he is sent to a hospital for mental treatment, lasting either for the term of his imprisonment or until he is certified as being cured, whichever is the longer. As the standards of comfort in the ordinary prison and the mental hospital are approximately the same, there is no advantage to a prisoner in pretending to a degree of mental derangement he does not actually suffer. In fact, the person suffering from mental ill health is likely to be locked up longer than the person who is perfectly sane. We have discovered to our surprise, since we reformed our laws, that there has been a marked decline in the number of persons requiring mental treatment, despite the fact that psychiatrists at the reception prison search for cases of mental disease most assiduously.

"In short, once we had rid ourselves of the presumptuous task of trying to apportion moral guilt among those who were a source of danger within the State, we found that the unhappy clash between the legal and medical professions abruptly came to an end. The doctors now have their own way to the full extent of their humanitarian leanings. The lawyers are satisfied because the State is being protected. The public are satisfied because they are safer than they were before."

In subsequent interviews, of which I did not retain my notes, the Lord Chief Justice explained the working of his system in more detail. Murder, it appeared, was a special case and was met by a term of incarceration on the first occasion, the length of the term being left to the discretion of the judge. As the intentions of the killer were immaterial, any killing ranked as a murder, including the killing of a pedestrian by a motorist. These had, however, become very rare. The introduction of the new system had been accompanied by an overhaul of the categories of criminal offences, which had previously been modelled on English law. Distinctions between felonies and misdemeanours had been swept away, and the general body of what are now termed in Ruritania "actions to the detriment of the State" has been divided into two categories, namely, crimes and offences, the latter being solely punishable by fines. The third offence by any wrongdoer was automatically treated as a crime.

It is unfortunate that Ruritania has disappeared behind the Iron Curtain since my holiday, as I am sure that some features of their legal system could have been studied with advantage in this country.

E. A. W.

NOTES OF CASES

COURT OF APPEAL

MALICIOUS PROSECUTION: FUNCTIONS OF JURY

Leibo *v.* D. Buckman, Ltd., and Another

Jenkins, Denning and Hodson, L.JJ. 21st November, 1952

Appeal from Oliver, J., sitting with a jury.

The plaintiff, who wished to set up as a maker of artistic pottery, approached the defendant, *B*, to obtain finance. *B* supplied the plaintiff with £20 to buy tools and £15 for other materials. The plaintiff showed to *B* his own tools, pretending that he had purchased them, and produced also receipts purporting to account for the expenditure of the money. *B* later discovered that the receipts were fakes and claimed the tools and materials. After a dispute he charged the plaintiff with the theft of £35. After hearing evidence, the magistrate refused to commit the plaintiff for trial. The plaintiff brought an action for malicious prosecution. Oliver, J., by agreement, put the following questions to the jury: (1) Did *B* honestly believe that the charge of larceny was true? Answer: No. (2) Was *B* acting maliciously in prosecuting the charge? Answer: Yes. (3) Damages? Answer: £50. Oliver, J., held that there was no evidence on which the jury could find that the defendants did not bring the proceedings honestly, and entered judgment for the defendants. The plaintiff appealed.

JENKINS, L.J., said that the question was, whether the judge was right in holding that there was no evidence on which the jury could answer the first question other than affirmatively. The question was not whether the jury, or judge, or Court of Appeal could rationally conclude on the evidence that the defendants had an honest belief. If the jury accepted the plaintiff's evidence, which they must be taken to have done, the facts known to the defendant were plainly inconsistent with his guilt. The appeal should be allowed.

HODSON, L.J., agreed.

DENNING, L.J., dissenting, said that ever since *Pain* v. *Rochester* (1602), Cro. Eliz. 871, judges had realised that it was most dangerous to leave the general issue to the jury in cases of malicious prosecution; they tended to be too sympathetic to the plaintiff. It was most important to adhere to the rule that it was for the judge to determine whether or not there was reasonable and probable cause, while the jury found what facts were known to the prosecutor when he made the charge; that rule had been re-stated in *Herniman* v. *Smith* [1938] A.C. 305, at pp. 317-318. was to be regretted that question (1) had been put to the jury; its effect was to take "reasonable cause" out of the hands of the judge. Appeal allowed.

APPEARANCES: *Phineas Quass*, Q.C., and *L. Wainstead* (*J. S. I. Rabin*); *Tristram Beresford*, Q.C., and *M. Finer* (*A. A. Finer*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

DOCK REGULATIONS: SEAMAN INJURED BY SHIP'S WINCH

Ritchie *v.* T. G. Irving & Co., Ltd.

Singleton, Birkett and Morris, L.JJ. 27th November, 1952

Appeal from Stable, J.

The plaintiff, a seaman on the defendants' coaling vessel, was working a winch unloading coal with another seaman. They were running the rope back on to the winch drum at the end of work, when the plaintiff, who was seeking to control the run of the rope, became entangled in it, so that he was pulled over the guard towards the drum and sustained serious injuries. He brought an action alleging negligence and a breach of reg. 26 of the Docks Regulations, 1934, which provides: "all . . . friction gearing . . . shall (unless it can be shown that by their position and construction they are equally safe to every person employed as they would be if securely fenced) be securely fenced so far as is practicable without impeding the safe working of the ship." Stable, J., dismissed the action. The plaintiff appealed on the issue of statutory duty.

SINGLETON, L.J., said that the defence was that it was not practicable to fence the winch more securely without impeding

the safe working of the ship, of which the operation of the winch was part; the judge accepted that submission, as he found that further fencing would be dangerous, as tending to foul the rope, or impracticable as rendering it impossible to clean or maintain the winch. That decision was right. The winch was of a normal type, and it had never been suggested such winches needed modification.

BIRKETT and MORRIS, L.JJ., agreed. Appeal dismissed.

APPEARANCES: *N. R. Fox-Andrews*, Q.C., and *J. H. Robson* (*Isadore Goldman & Son*, for *Crute & Sons*, Sunderland); *M. L. Berryman*, Q.C., and *W. G. Wingate* (*Sinclair, Roche & Temperley*, for *Botterell, Roche & Spark*, Sunderland).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

PROBATE, DIVORCE AND ADMIRALTY DIVISION

HUSBAND AND WIFE: LEGAL AID: SECURITY: HUSBAND ASSISTED PERSON

Vincent *v.* Vincent

Barnard, J. 14th November, 1952

Appeal to the judge in chambers from the refusal of a registrar to make an order for security for costs.

The parties were married in March, 1943. On 23rd April, 1951, the husband filed a petition for divorce in the Leeds district registry on the ground of his wife's desertion. On 25th May, 1951, the wife obtained a civil aid certificate to defend the petition and she filed her answer on 30th May, 1951. The husband obtained a civil aid certificate on 14th January, 1952. The wife's civil aid certificate was discharged on 26th March, 1952, but she obtained a further certificate limited to obtaining an order for security against the husband on 22nd July, 1952. Her application was dismissed by the district registrar at Leeds, who felt himself precluded from complying with r. 65 (3) of the Matrimonial Causes Rules, 1950, by reason of a registrar's direction purporting to interpret *Conway* v. *George Wimpey & Co., Ltd.* [1951] 1 T.L.R. 215, dated 29th January, 1951, with an addendum dated 4th October, 1951, to the effect that no order for security for costs should be made against an assisted person unless there were special circumstances.

The wife appealed.

BARNARD, J., referring to *S.* v. *S. and P.* (1927), 44 T.L.R. 52 and to *Williams* v. *Williams* (*Ward intervening*) [1929] P. 114, said that the peculiar nature of a wife's security for costs in the Divorce division, which was a right to be provided, where necessary, with the means of defence, was a distinguishing factor between the present case and that of *Conway* v. *George Wimpey & Co., Ltd., supra*. The decision in *Conway's* case should not be interpreted as preventing the making of an order for security against an assisted person in the absence of special circumstances. The matter should be referred back to the registrar to comply with r. 65 (3) of the Matrimonial Causes Rules, 1950. The registrar would, of course, take into account the fact that the husband was an assisted person and have regard to the facts stated in the civil aid certificate.

APPEARANCES: *Alan Trapnell* (*White & Leonard* for *Wells and Woodford*, Southampton); *Norman Black* (*Church, Adams, Tatham & Co.*, for *Day & Yewdall*, Leeds).

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law.]

COURTS MARTIAL APPEAL COURT

MILITARY LAW: MISAPPLICATION OF SERVICE PROPERTY

R. *v.* Tucker

Hilbery, Streatfeild and McNair, JJ. 26th November, 1952

Appeal from district court martial, Nairobi.

The appellant, a sergeant, was convicted on a charge alleging that when caterer of a sergeants' mess he "fraudulently misapplied" shs. 13,000 East African, part of the mess takings, contrary to s. 17 of the Army Act. His duty was to serve at the bar and to hand over the takings daily. According to the evidence he had done so; but proper accounts had not been kept by the mess treasurer, nor inspected by the responsible officer. After the appellant had exercised his duties for about six months an investigation was held, from which it was concluded that there was a substantial deficiency, the finding being based on information received from an African mess-boy and the statement of a sergeant-major who produced no calculations. The appellant contended that there had been a travesty of justice in that there was no evidence to substantiate the charge. The Courts Martial Appeal Act, 1951, provides, by s. 5 (1), that "the court shall allow the appeal if they think that the finding of the court martial is unreasonable . . . or that, on any ground, there was a miscarriage of justice . . ."

HILBERY, J., said that the finding that the appellant was guilty of misapplication was, on the evidence, unreasonable, and could not be supported. The deficiency might represent money, or goods, or both, and the way in which it had been arrived at was no proof of misapplication under s. 17. To misapply was to apply wrongly, and there was no proof that the appellant had applied the alleged or any sum for a wrong purpose, still less that he had done so dishonestly. The appeal would be allowed and the conviction quashed. Note 7 (*a*) to s. 17 in the Manual of Military Law was in such terms as almost to lend colour to the suggestion that the burden of proof shifted on to an accused man, where, by some process of accounting, there appeared to be a deficiency. This note was unfortunately worded, and should be the subject of revision. Appeal allowed.

APPEARANCES: *Charles Lawson* (*Registrar, Courts Martial Appeal Court*); *R. A. L. Hillard* (*Director of Army Legal Services*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

TALKING "SHOP" WITH RUPERT

(With apologies to the "Daily Express")

When we last heard of Mr. Plum he was wrestling with problems of exchange control (*ante*, p. 800). Towards Christmas he left Apple in charge of the office and went out to buy a "Rupert" Annual for his young nephew, Dennis Damson. These verses and commentary are what Mr. Plum (perplexed, perhaps, by his new bifocal spectacles) read at the booksellers:—

RUPERT ENTERS THE LAW

Young Rupert Bear is full of joy
To enter Mr. Sheep's employ—
Wise Mr. Sheep who knows the law,
Or used to do, before the war.

Like other young bears, Rupert had many exalted ideas, so he looked for a profession in which he could give much service to the public for little reward. When Mr. Sheep told him that solicitors work hard and receive only half as much again as they did in 1882, he recognised at once that this was the right profession for him. This was why Rupert was so pleased when Mr. Sheep said that he would take him into his office.

And so each morning Mrs. Bear
Packs his brief-case with loving care:
Two volumes of Queen's Bench Reports,
Some honeycombs, and Salmond's Torts.

Mrs. Bear was Rupert's mother. The brief-case was rather bulgy, and you may wonder why Rupert took all this reading-matter in the train. The fact is that Mrs. Bear used the Q.B. reports to pack on each side of the honeycombs. Otherwise the honey was apt to get into the torts and distract Rupert's studies. (By the way, it was Q.B. reports from Queen Victoria's reign that Mrs. Bear used for this purpose and they served quite well except that the dust off them was also apt to get into the honey.)

RUPERT STUDIES THE LAW

So many bulls and bears are seen
—Romance brings up the 9.15—
That very few are found to stare
At one small reasonable bear.

Arrived within his office door,
Rupert of law reads more and more.
Kind Mr. Sheep forbears to say
" You must unlearn it all one day."

It's not all buns and honey, mind,
As Rupert's all too soon to find ;
But little bears must wrinkle muzzles
When they attempt these legal puzzles.

Why, what's all this—I do declare—
—Cries Rupert—is not home to bear
His castle ? What's a licensee ?
Can his wife stay indefinitely ?

Wise Mr. Sheep says, view the ruins
Pro tem., ad hoc, as Mrs. Bruin's,
And wait till Providence accords
A ruling by the House of Lords.

Rupert was reading back numbers of THE SOLICITORS' JOURNAL when he came across two articles entitled " Claims for Ownership and Possession of the Matrimonial Home " (pp. 601 and 620, *ante*). He became rather muddled over all this, which perhaps accounts for his excitement. Mr. Sheep told him to calm down and explained that whilst it is for husband-bear to choose the matrimonial home it is for wife-bear to decide whether she will sit in it. Mr. Sheep then told him a very old story about three public schoolbears, a lady-bear and a chair which, owing to the crazy law of libel, must be omitted. Rupert—who went to a school that does not figure in that story—soon forgot his troubles and decided to act upon Mr. Sheep's advice.

RUPERT TROUBLED BY THE RENT ACTS

These Rent Acts, Rupert says, are tough ;
I feel I've nearly had enough ;
And now you say there'll be some more.
These cases make my head feel sore !

For law, said Sheep, we may be gluttons
Though standing closely by our muttons ;
Why in your head these cases carry
When you can find them in *Megarry ?*

The *gist* of what Rupert said was that he had had enough of the Rent Acts, but the words that he used were rather strong for a little bear. " Intemperate," Mr. Sheep said. Mr. Sheep told him not to carry on so and that he could not have such language in his office. Rupert was grateful to Mr. Sheep for his advice and has now got as far as *Beasty* v. *Brooks* (1948), 98 L.J. News. 303 (C.C.) in Mr. Megarry's book.

MR. SHEEP'S *Sound* ADVICE

One day appeared on Rupert's table
A statute drear and formidable—
The Income Tax Act '52—
Too long (thought Rupert) to be true.

Now, little bear, said Mr. Sheep,
Within that Act don't peer and peep :
For singing on the bath-rack prop it
Till Mrs. Bear insists you stop it.

After some experiments with the method advocated by Mr. Sheep, Rupert found that broadly this Act may be classified as part light opera, part heavy opera and part very heavy opera indeed. On the whole he prefers to sing little arias such as (s. 89 (1) (*a*)) :—

a tenant at rack rent/under a parole demise
from year to year/within the period defined/in
para. 2 of Sched. A,

though he finds it an improvement to start in the accepted manner :—

Q. But stay ! Who now approaches ?
A. A tenant at rack-rent/under a parole demise, etc.

It is also a help to attempt different voices to match the theme ; Rupert does his best with the bass though his voice is rather treble. The bass is best for thunderous announcements such as (s. 91) :—

In Scotland/ . . . a tenant who wilfully neglects
to comply/ . . . shall be liable to the penalty
of treble the tax,

which compares favourably in rhythm with much that nowadays passes for song and is a deal more intelligible.

So, to conclude this brief report
On methods Rupert has been taught :
" Wool before woolsack," says old Sheep,
" Of gathering wool I've done a heap."

" ESCROW."

SURVEY OF THE WEEK

ROYAL ASSENT

The following Bills received the Royal Assent on 16th December :—

Civil Contingencies Fund.
Colonial Loans.
Expiring Laws Continuance.
Greenock Corporation Order Confirmation.
New Valuation Lists (Postponement).
Public Works Loans.

HOUSE OF LORDS

A. PROGRESS OF BILLS

Read First Time :—

Merchandise Marks Bill [H.L.] [16th December.

To amend the provisions of the Merchandise Marks Acts, 1887 to 1938, relating to false trade descriptions, and to imported goods bearing the trade mark of a manufacturer, dealer or trader in the United Kingdom, and to increase certain penalties under those Acts.

In Committee :—

Emergency Laws (Miscellaneous Provisions) Bill [H.L.] [16th December.

B. QUESTIONS

CHARITABLE TRUSTS

The LORD CHANCELLOR stated that the report of the Nathan Committee, which had been considering changes in the law and practice (except as regards taxation) relating to charitable trusts in England and Wales, had now been received. The report as a whole was receiving careful consideration and the Government would announce its decision with regard thereto in due course. The Government had, however, given urgent consideration to one aspect of the report, namely, that of imperfect trust instruments, which was ancillary to the general problem, and it had decided to introduce legislation dealing with this question as soon as possible.

LORD NATHAN said that the Committee had been unanimous with regard to the question of imperfect trust instruments, but he had compared the recommendations of his committee with the Government's proposals and made no comment upon them. He would emphasise that this problem, though important, was not of central importance.

The LORD CHANCELLOR indicated that facilities would be given at a later date for discussion in this matter.

The following statement was issued with regard to the Government's intention on the matter of imperfect trust instruments :—

1. Subject to some minor differences which will appear in the later paragraphs of this statement, the Government accept in the main the proposals of the Committee set out in Chapter 12 of the Report for validating trust dispositions which authorise the application of property for both charitable and non-charitable purposes. They are not, however, satisfied that it is either right or necessary in the circumstances to make provision for the validation of trust dispositions for purposes which are wholly non-charitable.

2. The Government propose to introduce as soon as opportunity occurs a Bill, which, if Parliament approves, will make provision on the lines set out in the following paragraphs.

3. Broadly speaking, the Bill will validate dispositions of property which satisfy the following conditions—

(*a*) that the disposition was made before the 16th December, 1952;

(*b*) that the disposition is in terms which authorise the application of the property for purposes that comprise both charitable and non-charitable objects;

(*c*) that the disposition is invalid on grounds, such as remoteness or uncertainty, which would not invalidate it if its objects were wholly charitable; and

(*d*) that the disposition has been treated as valid.

4. From the passing of the Bill, property comprised in a disposition within its ambit will be made applicable by the Bill itself for charitable purposes only, unless a claim adverse to the disposition is successfully asserted in accordance with para. 5. The particular charitable purposes for which the property will thus be rendered applicable will be the purposes specified in the disposition so far as they are charitable.

5. A person who apart from the Bill would have a right to recover property comprised in a disposition within the ambit of the Bill on the ground of the invalidity of the disposition will be left free to assert that right if—

(*a*) at 16th December, 1952, the disposition has been in operation for less than six years (that is to say, either was made within six years before that date or was subject down to that date, or to within six years before that date, to a prior interest which absorbed the whole of the income or profits of the property), and

(*b*) any necessary action has already been begun or is begun at any time before the expiration of a year from the passing of the Bill.

Subject as above, such rights will be extinguished by the Bill; except that provision will be made for any relaxation of the conditions mentioned at (*a*) and (*b*) which may be proper for safeguarding the position of persons who have been or are under disability or whose interests have been or are in reversion only.

6. Application before the passing of the Bill of property comprised in a disposition within the ambit of the Bill in accordance with the terms of the disposition will be treated as having been a proper application, and rights which would exist apart from the Bill either to render the persons by whom such application has been made personally liable on the ground of misapplication or to recover from any recipient of any of the trust property will be extinguished by the Bill, except in a case in which an action to assert such a right has been begun before 16th December, 1952.

7. Forestalling of the proposed protective provisions by actions brought between 16th December, 1952, and the passing of the Bill to assert rights falling within the classes of rights which the Bill is to extinguish will be met by provision for staying any such action at the passing of the Bill if it is then still pending or for restitution if it has been completed.

8. For the purposes of taxation, the effect of the Bill will be that dispositions falling within its ambit will become entitled to the normal relief available by statute to charitable bodies, but no right will be conferred to reclaim any payments of tax already made, whether by direct payment or by deduction of tax.

[16th December.

HOUSE OF COMMONS

A. Progress of Bills

Read First Time :—

Accommodation Agencies Bill [H.C.] [16th December.

To prohibit the taking of certain commissions in dealings with persons seeking houses or flats to let and the unauthorised advertisement for letting of houses and flats.

Harbours, Piers and Ferries (Scotland) Bill [H.C.]
[16th December.

To extend the power of the Secretary of State under section seven of the Harbours, Piers and Ferries (Scotland) Act, 1937, to authorise the undertaking by certain local and harbour authorities of operations in connection with marine works.

White Fish and Herring Industries Bill [H.C.]
[15th December.

To provide for the payment out of moneys provided by Parliament of grants in respect of the acquisition of new vessels and engines for use in the white fish and herring industries, and of a subsidy in respect of white fish; to extend the power to make loans out of such moneys to the White Fish Authority and the Herring Industry Board, and the power to make grants out of such moneys to that Board for the promotion of the sale of herring and other purposes; and otherwise to amend the enactments relating to the said industries.

Read Second Time :—

Foundry Workers (Health and Safety) Bill [H.C.]
[12th December.

In Committee :—

Transport Bill [H.C.] [17th December.

B. Questions

Rationing Orders (Breaches)

Major Lloyd George stated that between 1st October, 1951, and 31st October, 1952, 5,847 cases of alleged breaches of the rationing orders were reported to food offices and investigated. Of these, 1,115 led to prosecutions, of which 1,080 were successful. In 166 cases further action was yet to be decided.
[15th December.

District Probate Registry, Bodmin

The Attorney-General stated that he was not yet able to make a statement on the proposal that the District Probate Registry, Bodmin, should be closed and its work transferred to another registry outside Cornwall. [15th December.

Northern Circuit (Civil Actions)

The Attorney-General stated that there were at present some 520 civil actions awaiting trial at Manchester and 450 at Liverpool. The Lord Chancellor hoped to be in a position to make a statement on the matter before the recess.
[15th December.

Children's Court, West London (Accommodation)

Sir David Maxwell Fyfe stated that the Stamford House Children's Court, Goldhawk Road, London, W., was adjacent to the London Remand Home and was hired for court purposes for one day a week by the Receiver for the Metropolitan Police District. The accommodation was limited and its standards were admittedly not high. He had asked the Receiver to take the matter up again with the owners of the premises.
[15th December.

Private House Building (Relaxation of Controls)

Mr. Harold Macmillan stated that from 1st January, 1953, it was intended to allow any person to build a house subject to planning permission and byelaw consent so long as it was not of more than 1,000 square feet and did not consume more than the appropriate part of softwood timber. Builders would be permitted to erect up to twelve houses. Local authorities were being asked to issue licences automatically to both these classes of applicant. [16th December.

Development Charges (Repayment)

Mr. R. A. Butler refused to arrange for any part of the £300m. assigned for compensation to be used to repay people who had already paid development charge upon a private house built for their own occupation. He stated, however, that if the person who had paid charge held an admitted claim on the £300m. he would be paid up to the amount of the charge with interest, provided that that did not exceed the claim. If he did not hold a claim there might in certain circumstances be a balance due to him after the holder of the claim had been satisfied.
[16th December.

UNFIT HOUSES

Asked whether he would introduce legislation to give local authorities power to trace owners of property who neglected their responsibility to carry out the orders of sanitary inspectors to remedy defects in houses, where the owners had no known address at which they could be found, Mr. HAROLD MACMILLAN referred the questioner to ss. 9, 167 and 168 of the Housing Act, 1936. [16th December.

UNFIT HOUSES (DEMOLITION ORDERS)

Mr. HAROLD MACMILLAN declined to introduce a Bill to amend the Housing Act, 1936, in order to determine demolition orders made under s. 11 of that Act, where houses in respect of which such orders had been made had been put into habitable condition. He considered that owners already had sufficient time to make a house habitable before a demolition order became operative. [16th December.

RENT INCREASES (TENANTS' COMPENSATION)

Mr. HAROLD MACMILLAN declined to introduce legislation to empower tenants to claim compensation from their landlords where the former had paid rents since the 1920 Act which included a percentage fixed for repairs and no such repairs had been executed. If a house was not in a reasonable state of repair the tenant could obtain a certificate from the sanitary authority, serve a copy on the landlord and withhold increases of rent permitted under the 1920 Act. [16th December.

TOWN AND COUNTRY PLANNING ACT (INQUIRY COSTS)

Mr. HAROLD MACMILLAN refused to take powers to reimburse property owners for their costs when their objections were upheld at hearings held under the Town and Country Planning Act. He thought it better in the general interest to adhere to the existing practice. [16th December.

CRIMINAL BUSINESS (SOUTH LANCASHIRE, INQUIRY COMMITTEE)

Sir DAVID MAXWELL FYFE stated that the Lord Chancellor had appointed a departmental committee with the following terms of reference :—

" To inquire into the need, in order to relieve pressure on courts of assize and quarter sessions, for the establishment in South Lancashire of a court on the lines of the Central Criminal Court ; and, if satisfied that the need for such a court exists, to consider and to report upon its composition, the nature of its jurisdiction, the areas (whether within or outside Lancashire) from which persons might be committed thereto, its place or places of sitting, the staff required for the proper functioning of the court and how the cost of providing, maintaining and operating the court should be met."

The chairman of the Committee would be Sir Alexander Maxwell, G.C.B., K.B.E., and the other members of the Committee would be :—

Mr. P. Allen, Home Office.
Sir Leonard Holmes, J.P., solicitor, President of The Law Society, 1950.
Mr. A. E. Jalland, Q.C., J.P., Chairman of the Lancashire Quarter Sessions and Recorder of Preston.
County Councillor J. Selwyn Jones, J.P., of Lancashire.
Alderman A. Moss, of Manchester.
Mr. Basil Nield, M.B.E., Q.C., M.P., Recorder of Salford.
Sir Alfred Shennan, J.P., of Liverpool.
Mr. R. Somerville, of the Duchy of Lancaster Office.
Mr. R. E. K. Thesiger, of the Lord Chancellor's Office.

The Secretary of the Committee was Mr. N. S. Ross, of the Home Office. [16th December.

STATUTORY INSTRUMENTS

Bankruptcy Fees Order, 1952. (S.I. 1952 No. 2114 (L.15).) 8d.
Bankruptcy Rules, 1952. (S.I. 1952 No. 2113 (L.14).) 5s. 3d. See *ante*, p. 838.
Building Societies (Amendment of Fees) Regulations, 1952. (S.I. 1952 No. 2160.)
Civil Defence (Billeting) Regulations, 1952. (S.I. 1952 No. 2138.)
Coal Mines (Plans) Rules, 1952. (S.I. 1952 No. 2127.)
Copper and Zinc Prohibited Uses (Board of Trade) (Revocation) Order, 1952. (S.I. 1952 No. 2157.)
Copper and Zinc Prohibited Uses (Minister of Supply) (No. 5) (Revocation) Order, 1952. (S.I. 1952 No. 2164.)
Export of Goods (Control) (Amendment No. 4) Order, 1952. (S.I. 1952 No. 2136.) 6d.
Fire Services (Pensions Increase) Regulations, 1952. (S.I. 1952 No. 2167.) 6d.
Firemen's Pension Scheme (No. 3) Order, 1952. (S.I. 1952 No. 2166.) 8d.
Friendly Societies (Amendment of Fees) Regulations, 1952. (S.I. 1952 No. 2158.)
Furniture (Maximum Prices) (Revocation) Order, 1952. (S.I. 1952 No. 2125.)
Greenwich (Councillors and Wards) Order, 1952. (S.I. 1952 No. 2120.) 6d.
Harrogate (Amendment of Local Enactment) Order, 1952. (S.I. 1952 No. 2139.)
Industrial and Provident Societies (Amendment of Fees) Regulations, 1952. (S.I. 1952 No. 2159.)
Leek Urban District (Amendment of Local Enactment) Order, 1952. (S.I. 1952 No. 2140.)
Marriages Validity (Brockley Congregational Church, Deptford) Order, 1952. (S.I. 1952 No. 2134.)
Marriages Validity (St. Anthony's Church Hall, Wolverhampton) Order, 1952. (S.I. 1952 No. 2133.)
Milk (Special Designations) (Scotland) Order, 1952. (S.I. 1952 No. 2142 (S.108).)
National Health Service (General Medical and Pharmaceutical Services) Amendment (No. 2) Regulations, 1952. (S.I. 1952 No. 2135.)
National Insurance (Increase of Benefit and Miscellaneous Provisions) Regulations, 1952. (S.I. 1952 No. 2144.) 8d.
Prohibition of Landing of Animals and Hay and Straw from the Channel Islands Order (No. 2) 1952. (S.I. 1952 No. 2143.)
Purchase Tax (No. 9) Order, 1952. (S.I. 1952 No. 2141.)
Rules of the Supreme Court (No. 2), 1952. (S.I. 1952 No. 2122 (L.17).) See *ante*, p. 838.
Safeguarding of Industries (Exemption) (No. 7) Order, 1952. (S.I. 1952 No. 2121.)
Second-hand Goods (Maximum Prices and Records) (Revocation) Order, 1952. (S.I. 1952 No. 2126.)
Stopping up of Highways (Middlesex) (No. 6) Order, 1952. (S.I. 1952 No. 2130.)
Stopping up of Highways (Worcestershire) (No. 6) Order, 1952. (S.I. 1952 No. 2129.)
Superannuation and other Trust Funds (Fees) Regulations, 1952. (S.I. 1952 No. 2161.)
Utility Furniture (Marking and Supply) (Revocation) Order, 1952. (S.I. 1952 No. 2124.)
Utility Furniture (Supply) Order, 1952. (S.I. 1952 No. 2123.)
Winchester Rural District Council Water Order, 1952. (S.I. 1952 No. 2137.)

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 102–103 Fetter Lane, E.C.4. The price in each case, unless otherwise stated, is 4d., post free.]

BOOKS RECEIVED

The Excess Profits Levy. By S. W. MAGNUS, B.A., of Gray's Inn, Barrister-at-Law, and MAURICE ESTRIN, Associate of the Society of Incorporated Accountants and Auditors. 1952. pp. xix and (with Index) 213. London : Butterworth & Co. (Publishers), Ltd. 32s. 6d. net.

"Current Law" Income Tax Acts Service. [CLITAS.] Volume Two. Profits Tax and Excess Profits Levy. Editors : DESMOND MILLER, Barrister-at-Law, and H. MAJOR ALLEN, Barrister-at-Law. 1952. London : Sweet & Maxwell, Ltd. ; Stevens & Sons, Ltd. Edinburgh : W. Green & Son, Ltd. Available to CLITAS subscribers at £2 12s. 6d. (not sold separately).

Register of Surveyors, Land Agents, Auctioneers and Estate Agents. 1952. pp. liii and 1126. London : Thomas Skinner & Co. (Publishers), Ltd. £2 net.

NOTES AND NEWS

Honours and Appointments

Lt.-Col. H. W. F. CLAY, solicitor, of Nuneaton, has been appointed a Deputy Lieutenant of Warwickshire.

Mr. H. B. DOLPHIN, deputy town clerk of Wednesbury, has been appointed town clerk of Glossop.

Mr. THOMAS FOORD, assistant solicitor with Birmingham Corporation, has been appointed senior assistant solicitor to Bournemouth Corporation in place of Mr. E. J. JONES, who has been appointed deputy town clerk of Worcester.

Mr. JOHN SIMMONS, assistant solicitor with Bristol Corporation, has been appointed to the legal staff of the Devon County Council.

Mr. JOHN WHATLEY, assistant solicitor with Heston and Isleworth Borough Council, has been appointed deputy town clerk of Kettering in succession to Mr. W. J. R. Howells.

Miscellaneous

The Central Land Board state that, during the period until the decision of Parliament on the terms of the Town and Country Planning Bill, 1952, is known, the Board do not propose to consider any new acquisitions of land under the Town and Country Planning Act, 1947.

DEVELOPMENT PLANS

OLDHAM DEVELOPMENT PLAN

As already briefly noted, the Minister of Housing and Local Government approved (with modifications) the above development plan on the 29th November, 1952. A certified copy of the plan as approved has been deposited at the Town Clerk's Office, Town Hall, Oldham, and will be open for inspection free of charge by all persons interested between the hours of 8.45 a.m. and 5 p.m. on Mondays to Fridays, and 8.45 a.m. and 12 noon on Saturdays. The plan became operative as from the 6th December, 1952, but if any person aggrieved by the plan desires to question the validity thereof or of any provision contained therein on the ground that it is not within the powers of the Town and Country Planning Act, 1947, or on the ground that any requirement of the Act or any regulation made thereunder has not been complied with in relation to the approval of the plan, he may, within six weeks from the 6th December, 1952, make application to the High Court.

SOUTHEND-ON-SEA DEVELOPMENT PLAN

The above development plan was on the 9th December, 1952, submitted to the Minister of Housing and Local Government for approval. The plan relates to land situate within the County Borough of Southend-on-Sea. A certified copy of the plan as submitted for approval has been deposited for public inspection at the Municipal Buildings, Clarence Road, Southend-on-Sea. A copy of the plan so deposited is available for inspection free of charge by all persons interested at the place mentioned above between the hours of 10 a.m. and 12.30 p.m. and 2.30 p.m. and 5 p.m. on all week-days except Saturdays and Bank Holidays, and on Saturday mornings between the hours of 10 a.m. and 12 noon. Any objection or representation with reference to the plan may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 31st January, 1953, and any such objection or representation should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the Council of the County Borough of Southend-on-Sea and will then be entitled to receive notice of the eventual approval of the plan.

OBITUARY

MR. J. CAMPBELL

Mr. Joseph Campbell, solicitor, of Wigan and Hindley, died at Knebworth on 13th December. He was admitted in 1902.

MR. D. J. CARTWRIGHT

Mr. David James Cartwright, O.B.E., solicitor, of Huddersfield, died on 27th November, aged 56. Admitted in 1920, he was a past President of Huddersfield Law Society. An alderman of Huddersfield Town Council and a member since 1928, Mr. Cartwright was Mayor of Huddersfield in 1949. He received the O.B.E. for his war-time services as Chairman of the Emergency Civil Defence Committee. He was Vice-President of Huddersfield Choral Society and Branch President and County Vice-President of the Royal Society of St. George.

MR. W. C. CRIPPS

Mr. William Charles Cripps, retired solicitor, of Tunbridge Wells, died on 31st October. He was born in 1855 and admitted in 1877, practising at Tunbridge Wells for fifty years. He was the Charter Town Clerk of Tunbridge Wells from 1889 to 1925 and was made an Honorary Freeman of the Borough in the latter year. He served on the Kent County Council for a number of years from 1929 and was appointed a Justice of the Peace in 1902.

MR. C. S. GOODFELLOW

Mr. Charles Stuart Goodfellow, retired solicitor, of Caerphilly, former Clerk to the Caerphilly Petty Sessional Division, died on 26th November, aged 87.

MR. W. H. GREEN

Mr. Walter Howard Green, solicitor, of Colmore Row, Birmingham, died on 4th December, aged 76. He was admitted in 1900.

MR. A. H. HARDING

Mr. Arthur Herbert Harding, J.P., solicitor, of Croydon, died on 21st November, aged 67. He was admitted in 1911 and was Mayor of Croydon from 1939 to 1942.

MR. A. P. HILL

Mr. Arthur Percy Hill, solicitor, of Altrincham, died recently at Bowdon. He was admitted in 1909.

MR. A. HOPKIN

Mr. Arthur Hopkin, solicitor, of Pontardawe, died on 1st December, aged 75. He was admitted in 1901.

MR. E. B. JENKINS

Mr. Edward Brymor Jenkins, O.B.E., solicitor, of Newcastle-upon-Tyne, died on 26th November, aged 43. Admitted in 1932, he was assistant city solicitor at Cardiff until 1938, when he was appointed prosecuting solicitor to Newcastle Corporation. He had been Secretary of the Newcastle Regional Hospital Board since 1947 and was awarded the O.B.E. last year.

MR. A. TABRUM

Mr. Ashley Tabrum, O.B.E., Clerk of the Peace and of the Cambridgeshire County Council, 1913–1945, died on 14th December, aged 73. He was admitted in 1903.

SOCIETIES

At the sixty-seventh annual meeting of DERBY LAW SOCIETY, held at the County Court, Derby, Mr. W. L. P. Woolley, of Derby, was elected President. Other officers appointed were: Vice-President, Mr. R. S. D. Cash (Ripley); Hon. Treasurer, Mr. A. V. Nutt (Derby); Hon. Secretary, Mr. D. S. Winning (Derby). The following were elected to serve on the committee with the *ex-officio* members: Messrs. C. S. Bowring, H. C. Copestake, E. W. Tilley, R. A. Waldron, D. A. S. Cash, B. Johnson, P. B. Mather, G. B. Robotham, J. H. Richardson, N. R. Pinder, J. A. Garnett, F. W. Barnett, T. Wilson, D. Worth, H. W. Timms, A. Haldenby.

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